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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

In re PAMELA P., a Person Coming Under  
the Juvenile Court Law.

H042710  
(Santa Clara County  
Super. Ct. No. JV40470 A & B)

THE PEOPLE,

Plaintiff and Respondent,

v.

PAMELA P.,

Defendant and Appellant.

The sole issue in this appeal is whether the juvenile court complied with its duty under Welfare and Institutions Code section 702 to declare whether appellant Pamela P.'s Vehicle Code section 10851 violation was a felony or a misdemeanor. We conclude that the court complied with its duty.

**I. Background**

In January 2014, a Welfare and Institutions Code section 602 petition was filed alleging that 14-year-old Pamela had violated Vehicle Code section 10851, subdivision (a). The January petition alleged that the Vehicle Code section 10851

offense was a felony. In March, a second Welfare and Institutions Code section 602 petition was filed alleging that Pamela had committed misdemeanor vandalism (Pen. Code, § 594). In April, Pamela admitted the allegations as alleged in both petitions and was granted deferred entry of judgment. The court's signed April 9 jurisdictional order lists the Vehicle Code section 10851 offense and the vandalism offense. Next to each offense are two checkboxes. One is for felony and the other for misdemeanor. The felony checkbox is checked next to the Vehicle Code section 10851 offense, and the misdemeanor checkbox is checked next to the vandalism offense. Below the listed offenses is a checkbox that is checked next to the preprinted words: "The court has considered whether the above offense(s) should be felonies or misdemeanors."

In July 2015, the court found that Pamela had failed on deferred entry of judgment, and it sustained the petitions. At the hearing, the court stated: "I will sustain the underlying car theft. That will be a felony."

In August 2015, the court declared Pamela a ward and placed her on probation. The court's August 2015 dispositional order contained a checked checkbox next to the text: "The court previously sustained the following counts. Any charges which may be considered a misdemeanor or a felony for which the court has not previously specified the level of offense are now determined to be as follows:" Below this text the two counts were listed with the "Felony" checkbox checked for the Vehicle Code section 10851 count and the "Misdemeanor" checkbox checked for the vandalism count. Pamela timely filed a notice of appeal.

## **II. Analysis**

Pamela's only contention on appeal is that the juvenile court erroneously failed to expressly exercise its discretion to declare the Vehicle Code section 10851 to be either a felony or a misdemeanor.

A violation of Vehicle Code section 10851 is punishable as either a felony or a misdemeanor. (Veh. Code, § 10851, subd. (a).) “If the minor is found to have committed an offense which would in the case of an adult be punishable alternatively as a felony or a misdemeanor, the court *shall declare* the offense to be a misdemeanor or felony.” (Welf. & Inst. Code, § 702, italics added.)

In *In re Manzy W.* (1997) 14 Cal.4th 1199 (*Manzy*), the California Supreme Court held that a remand was required where the juvenile court had failed to make an express declaration as to whether the offense was a felony or a misdemeanor. In *Manzy*, the offense had been alleged as a felony, and Manzy had admitted the allegation. (*Manzy*, at p. 1202.) The juvenile court had committed Manzy to the California Youth Authority and set his maximum term of physical confinement at three years, a felony-level term. (*Manzy*, at p. 1203.) The California Supreme Court held that Welfare and Institutions Code section 702’s requirement of an express declaration required a remand. The court noted that a mere reference to the offense as a felony in the minutes of the dispositional hearing would not obviate the need for an express declaration by the court. (*Manzy*, at pp. 1207-1208.)

The California Supreme Court pointed out in *Manzy* that a remand was not “‘automatic’” whenever the juvenile court failed to make an express declaration. (*Manzy*, *supra*, 14 Cal.4th at p. 1209.) “[T]he record in a given case may show that the juvenile court, despite its failure to comply with the statute, was aware of, and exercised its discretion to determine the felony or misdemeanor nature of a wobbler. In such case, when remand would be merely redundant, failure to comply with the statute would amount to harmless error. We reiterate, however, that setting of a felony-length maximum term period of confinement, by itself, does not eliminate the need for remand when the statute has been violated. The key issue is whether the record as a whole establishes that the juvenile court was aware of its discretion to treat the offense as a misdemeanor and to state a misdemeanor-length confinement limit.” (*Ibid.*)

Pamela contends that a remand is required because the record does not adequately reflect that the court “was aware of its discretion to treat the offense as a misdemeanor . . . .” If the court had violated the statute, we would be inclined to agree with Pamela that the various checkboxes in the minute orders were inadequate to demonstrate that the court was aware of its discretion. However, we agree with the Attorney General that the juvenile court’s express declaration at the time it sustained the Vehicle Code section 10851 count complied with Welfare and Institutions Code section 702. The court expressly declared: “I will sustain the underlying car theft. *That will be a felony.*” (Italics added.) The court’s unambiguous declaration that the Vehicle Code section 10851 count “will be a felony” served no purpose other than to comply with Welfare and Institutions Code section 702. Since the court complied with the statute by making this express declaration, we reject Pamela’s claim that a remand is necessary.

### **III. Disposition**

The order is affirmed.

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Mihara, J.

WE CONCUR:

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Elia, Acting P. J.

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Bamattre-Manoukian, J.

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H042710